LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH COUNCIL OF INDEPENDENT SCHOOLS (SCIS)

SCIS is the membership body for 74 independent mainstream, additional support needs, and specialist schools in Scotland.

The Scottish Government’s overall programme of Non-Domestic Rates reform, and how the Bill fits into this.

The Government is committed to “a non-domestic rates system designed to better support business growth and long-term investment and reflect changing marketplaces.”

However, Section 10 of the Bill directly contradicts the ambition to make Scotland a better place to do business, by placing successful not-for-profit Scottish educational institutions at a two-fold (see below) competitive disadvantage to England, Wales and the wider world – at a time when the global market for school-age education is expanding exponentially.

How the Government has responded to the Barclay review, in particular on those recommendations it has rejected in full or part.

The consultation did not address any of the wider context relating to independent schools:

- it did not consider the existing OSCR test – established by the Scottish Parliament - that was applied specifically to independent schools;
- it did not consider the implications of creating a unique, second tier of charities within Scotland or GB;
- it was supported by a BRIA which made a broad assumption about the cost to the sector, which itself ran contrary to the way schools were tested for their public benefit and sought to minimise the impact on individual schools;
- it is a matter of public record through FOI that neither OSCR, nor some departments of the Scottish Government, were convinced of the wisdom of creating a small, anomalous group of charities - one that had already been singled out for testing. No consideration of, or reflection on, that advice appeared as a result of the consultation process;
- the consultation, and the period since the Government's statement in December 2017, involved no data gathering from the independent sector, no direct contact with the schools involved, and made no reference to any of the data supplied by SCIS to the Scottish Government in advance of the December 2017 decision.
In addition, the Financial Memorandum attached to the Bill assumes no cost to the taxpayer of the proposal, and showed that the impact on schools would now be more than £7 million per year, rather than the £5 million proposed by the Barclay Review and put to public consultation.

Every penny of the additional tax burden will have to be derived from existing parental fee income, salary costs of the staff roll, existing school assets, or from the money allocated to means-tested fee assistance as part of the Public Benefit test. Any fee rise will affect those paying full fees but also those receiving up to 80% means-tested fee assistance, and every pupil leaving the sector will be a cost to the taxpayer of c.£6,500 (at Government figures), added to the impact on class sizes, catchment, teacher numbers etc.

Section 2 of the Bill which provides that revaluation of properties subject to non-domestic rates would be carried out every 3 years rather than every 5 years.

If the revaluation is to become three yearly from 2022, then any increases following from the Barclay proposals – if accepted - should at the very least await that 2022 revaluation. The proposals have been put forward too late for any bodies to appeal their rates valuation in the current period. As such, those bodies should undergo an up-to-date revaluation before rate rises are implemented.

Schools are locked into budgetary cycles of at least 5-6 years, that being the length of a secondary school career for a pupil on means-tested fee assistance. A five-fold, one-off increase in business rates, in a very short timeframe, will have a disproportionate effect on school finances, scrutinised as they are by the Charity Regulator.

Sections 6-9, which aim to reduce the current high rate of valuation appeals, which the Scottish Government perceives as speculative.

See response to Section 2.

Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools, and section 11 which gives the Scottish Ministers the power to issue guidance to local authorities on the appropriate way to use their powers to grant sports club relief.

The Bill enshrines two fundamental misconceptions – that local authority schools “pay” rates in the same way independent schools pay reduced rates, and that independent schools can and should be treated differently from all other registered charities.
On the first point, no local authority Head needs to know their school’s rateable value. That value is a notional one, allocated then budgeted away at source by a local authority that pays all the running costs of that school. Those same Heads or their business managers will never need to consider, as every independent school now will, what cost-cutting steps they would take to address any rise or fall in that notional rate – because they will never have to do it. The Government has used an argument of parity which it does not extend elsewhere.

Parity is not considered in relation to other registered charities either. The passage of the Charities and Trustee Investment (Scotland) Act 2005 through the Scottish Parliament, steered by a previous Communities Committee, established that independent schools would remain on the charity register only if they passed a public benefit test devised by the Parliament and confirmed by the Bill’s passage in June 2005. Passing that charity test involved considerable work by the schools and the regulator from 2007 to 2014. This Bill now seeks to make a further exception for those schools that passed the test, while making no such demands of thousands of other registered charities that may charge fees, that may restrict membership, that exist to “advance education” and/or which parts of society may not support for personal, political, religious or other reasons.

The principle on which charities are afforded relief from business rates is long established. In a 1959 Report, the Committee on the Rating of Charities and Kindred Bodies commented on the position with a focus on England and Wales, but setting down principles which were adopted across Great Britain. It stated that it would require a strong argument to deny one group of charities relief, while all other charities would be treated more favourably. There is no logic in singling out one type of charity for a denial of relief while taking a different view of both Universities and ALEOs, and not considering independent health and care providers.

Independent schools are expected to deliver the same level of means-tested widened participation, and sharing of facilities, staff and resources – all of which have flourished through the public benefit demands of the charity test - while the financial model on which those projections, and supported by previous legislation, is pulled apart.

The proposal separates additional support needs from mainstream schools. It does so in the very same year that the Scottish Government has published further guidelines on providing education in a mainstream setting. While all will agree that special needs schools, including independent ones, are an unalloyed good for Scottish education provision, creating separate tax treatment makes a distinction in their worth and worthy, precisely when mainstream independent schools have very

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1 https://www.oscr.org.uk/about-oscr/reviews-of-charitable-status/#review-of-schools
substantial learning support and mainstreaming commitments (in some cases bigger than the entire special needs sector).

Exactly the same dilemma comes about when creating an exemption for any independent school where all the pupils are selected “on the basis of **musical ability or potential**,” and follow a curriculum which includes “classes aimed at developing musical excellence”. Music instruction and provision is flourishing in the independent sector, at a time when its absence elsewhere makes regular headlines. In most independent schools all pupils learn music and most can be graded in that subject.

As a result of the Barclay Review, allowing for 100% rates relief to private, profit-making providers at **early years/nursery** level but not stand-alone independent school nurseries is inconsistent, and an imbalanced use of public support. Withdrawing that relief from pupils at the age of 5 who continue to independent school makes no sense it terms of equity, opportunity or parity. Nor does reintroducing that same public support at the age of 16-18 should those same pupils continue to further or higher education. If schools provide and advance education and care, as they do, they should not be separated arbitrarily from any other body doing the same by an Act of the Scottish Parliament.

If the Bill is genuinely motivated by equity and parity with state schools, that must work both ways. Parity would see the Scottish Government and Parliament ask HMRC to show parity in **VAT treatment**, extending VAT exemptions that are only partial for independent schools to full exemption as with local authority schools. Education is an exempt supply and so no VAT can be levied on school fees but many costs incurred by schools attract VAT. State-maintained schools, however, benefit from an exemption by virtue of their statutory obligation to deliver education and so all VAT can be recovered on relevant expenditure.

As such, if the Government wishes both sectors to operate under identical conditions, they should balance the impact of VAT recovery. After 2010 the UK Government brought in specific provisions to ensure that Academies (legally charities and not statutory bodies) could reclaim VAT, a route the Scottish Government could pursue for independent schools in tax equality was its aim. The VAT relief for any state school itself exceeds the amount the Government is seeking to raise from independent schools.

The expectation that such **school resources and facilities** should - rightly - be as widely used as possible - runs contrary to the decision to remove business rates relief from those same schools. This is at a time when sports training provision is at a premium, and fully-maintained grass pitches, all-weather pitches, swimming pools and other facilities are increasingly hard to access and afford. When local authorities are seeking to increase the public contribution to access their own facilities - which only recently sought charitable status - it is manifestly counter-productive to the
wider health needs of the nation to exclude other facilities in the same way, or to force them, by paying full business rates, to provide access to their facilities at more commercial rates to recoup the added overheads.

If independent schools are to be charged non-domestic rates, like genuinely private, commercial businesses, is it the expectation that they now rent out their football, hockey and rugby pitches; their music facilities; swimming pools; their shared careers and subject events; professional staff and all other local activity at commercial rates? The Bill’s Policy Memorandum recognises that “The Scottish Government’s policy intent here is to continue to support, and encourage local authorities to support, affordable community based facilities that give people the chance to take part in sporting activities thus contributing to (amongst other aims around an active Scotland) the Scottish Government aim to cut physical inactivity in adults and teenagers by 15% by 2030.” Section 10 would work against that.

There is nothing objectionable about holding bodies that educate this nation’s, and others, young people to account. It is highly problematic and contradictory to do so by singling out 50 bodies from 24,000 others, while failing to address any of the inherent contradictions. Every child removed from an independent school if fees rise will be an additional cost and space for Scottish local authorities to deal with, just as every staff member lost to rising costs will be an expensive loss for Scotland – the draft Bill makes no mention of them.

The Scottish Parliament was the first to introduce a widening access measure for independent schools in 2005. This Bill runs the risk of narrowing it again.